

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1209 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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BHAVIN @ VIPUL LAXMANBHAI BHAVSAR THROUGH HIS FATHER  
LAXMANBHAI ISHWARBHAI BHAVSAR

Versus

COMMISSIONER OF POLICE & OTHERS

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Appearance:

MR SHASHIKANT S GADE for Petitioner  
MR SS PATEL ASST. GOVERNMENT PLEADER  
for Respondent Nos. 1 & 2.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/08/1999

ORAL JUDGEMENT

Heard the learned advocate for the respective parties.

2. The petitioner challenges the order of preventive detention dated 2nd December, 1998 made by the Commissioner of Police, Ahmedabad City under the powers

conferred upon him under Sub-section (1) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the "Act"), against one Pravin @ Vipul Laxmanbhai Bhavsar, the son of the petitioner.

2. The detenu is alleged to be a "dangerous person" within the meaning of Section 2(c) of the Act and his activities are found to be prejudicial to the maintenance of public order. Eight offences punishable under Section 379 of the Indian Penal Code have been registered against the detenu and are pending investigation. Five of the said offences have been registered within a span of three days. On the date of the order of detention, the detenu was in Police Custody. Besides, two individuals have given their statements in respect of the nefarious activities of the detenu and particularly in respect of the incidents of 12th November, 1998 and 14th November, 1998. In each of the offences registered against the detenu, stolen Mopeds/By-cycles have been recovered from the detenu.

3. Mr. Gade submitted that registration of five offences within a period of three days itself is malafide and the detaining authority ought not have relied upon the said offences. Besides, the offences alleged to have been committed by the detenu, have no potentially of affecting the public order. The detenu could not have been detained under the Act. Further the statements of the witnesses have not been verified by the detaining authority in respect of the correctness thereof and the privilege claimed under Section 9(2) of the Act is also not warranted. In absence of the names and the other particulars of the witnesses, the detenu's right to make an effective representation has been infringed.

4. It is true that each of the offences registered against the detenu is punishable under Section 379 of Indian Penal Code and none of the said offences can be said to have affected the public order. Besides, the detaining authority has not recorded his subjective satisfaction in respect of the correctness of the statements made by the witnesses. All that is verified by the detaining authority is the genuineness of the fear expressed by the witnesses with a view to invoking the privilege under Section 9(2) of the Act. Further no contemporaneous evidence is taken note of by the detaining authority. This Court in the matter of Mohmad Sarif @ Kaliyo Nurmohmadsarnibapu Shaikh vs. C.P.Ahmedabad and others (1997(1) G.L.H.1017) has held that " the mere reproduction of such statements in the

body of the order cannot be said to be sufficient so as to show the application of mind by the detaining authority at the time of passing of the order, more particularly when there is no contemporaneous evidence taken note of and considered by the detaining authority." In the present case also, as observed hereinabove, the subjective satisfaction in respect of the credibility of the witnesses and the genuineness of the statements made by the witnesses have not been recorded in the grounds of detention, nor any contemporaneous evidence has been shown to exist which has been taken note of and considered by the detaining authority at the time of making of the order, the subjective satisfaction recorded by the detaining authority is, therefore, vitiated. The continued detention of the detenu is unwarranted.

5. In the result, the petition is allowed. The order dated 2nd December, 1998 (Annexure :A to the petition) is quashed and set aside. Rule is made absolute. The detenu -Bhavin @ Vipul Laxmanbhai Bhavsar, unless is required to be detained in some other case, be released forth with.

Date:10/8/1999.

(ccshah) -----